

§ 58-21-20. Eligible surplus lines insurer required.

(a) A surplus lines licensee shall not place coverage with a nonadmitted insurer unless, at the time of placement, the surplus lines licensee has determined that the nonadmitted insurer satisfies the following:

(1) Repealed by Session Laws 2011-120, s. 6, effective July 21, 2011.

(2) Qualifies under one of the following subdivisions:

a. Has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction, which equals the greater of either:

1. This State's minimum capital and surplus requirements under G.S. 58-7-75.

2. Fifteen million dollars (\$15,000,000).

The requirements of this sub-subdivision may be satisfied by an insurer's possessing less than the minimum capital and surplus upon an affirmative finding of acceptability by the Commissioner. The finding shall be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, market availability, and company record and reputation within the industry. In no event shall the Commissioner make an affirmative finding of acceptability when the nonadmitted insurer's capital and surplus is less than four million five hundred thousand dollars (\$4,500,000).

b. In the case of any Lloyd's plans or other similar group of insurers, which consists of unincorporated individual insurers, or a combination of both unincorporated and incorporated insurers, maintains a trust fund in an amount of not less than one hundred million dollars (\$100,000,000) as security to the full amount thereof for all policyholders and creditors in the United States of each member of the group, and the trust shall likewise comply with the terms and conditions established in subdivision (2)a. of this section for alien insurers.

c. In the case of an "insurance exchange" created by the laws of individual states, maintain capital and surplus, or the substantial equivalent thereof, of not less than seventy-five million dollars (\$75,000,000) in the aggregate. For insurance exchanges which maintain funds in an amount of not less than fifteen million dollars (\$15,000,000) for the protection of all insurance exchange policyholders, each individual syndicate shall maintain minimum capital and surplus, or the substantial equivalent thereof, of not less than five million dollars (\$5,000,000). If the insurance exchange does not maintain funds in an amount of not less than fifteen million dollars (\$15,000,000) for the protection of all insurance exchange policyholders, each individual syndicate shall meet the minimum capital and surplus requirements of subdivision (2)a. of this section.

d. In the case of a group of incorporated insurers under common administration, which has continuously transacted an insurance business outside the United States for at least three years immediately before this time, and which submits to this State's authority to examine its books and records and bears the expense of the examination, and maintains an aggregate policyholders' surplus of not less than ten

billion dollars (\$10,000,000,000), and maintains in trust a surplus of not less than one hundred million dollars (\$100,000,000) for the benefit of United States surplus lines policyholders of any member of the group, and each insurer maintains capital and surplus of not less than twenty-five million dollars (\$25,000,000) per company.

- (3) Has caused to be provided to the Commissioner a copy of its current annual statement certified by such insurer; such statement to be provided no more than two months, and for alien insurers six months, after the close of the period reported upon and that is either:
- a. Filed with and approved by the regulatory authority in the domicile of the nonadmitted insurer; or
 - b. Certified by an accounting or auditing firm licensed in the jurisdiction of the insurer's domicile; or
 - c. In the case of an insurance exchange, the statement may be an aggregate combined statement of all underwriting syndicates operating during the period reported.

(a1) A surplus lines licensee shall not place coverage with a nonadmitted domestic surplus lines insurer unless, at the time of placement, the surplus lines licensee has verified that the insurer is a nonadmitted domestic surplus lines insurer as defined in G.S. 58-21-10.

(b) In addition to meeting the requirements in subdivisions (a)(1) through (a)(3) of this section, an insurer shall be an eligible surplus lines insurer if it appears on the most recent list of eligible surplus lines insurers published by the Commissioner. Nothing in this subsection shall require the Commissioner to place or maintain the name of any nonadmitted insurer on the list of eligible surplus lines insurers. There shall be no liability on the part of, and no cause of action of any nature shall arise against, the Commissioner or his employees or representatives for any action taken or not taken by them in the performance of their powers and duties under this subsection.

(c) Every surplus lines insurer that applies for eligibility under this section shall pay a nonrefundable fee of five hundred dollars (\$500.00). In order to renew eligibility, such insurer shall pay a nonrefundable renewal fee of one thousand dollars (\$1,000) on or before January 1 of each year thereafter. Such fees shall not be prorated. (1985, c. 688, s. 1; c. 793; 1985 (Reg. Sess., 1986), c. 1027, s. 46; 1989 (Reg. Sess., 1990), c. 1069, s. 13; 1991, c. 681, s. 39; 1993 (Reg. Sess., 1994), c. 678, s. 15; 1995, c. 507, s. 11A(c); 2001-223, s. 17.1; 2009-451, s. 21.14(a); 2011-120, s. 6; 2018-120, s. 2.1(e).)